Discoverability of cultural content on music streaming platforms in Africa: cultural policies, market forces, and law

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Résumé

Ce chapitre traite de la «découvrabilité» des contenus musicaux sur les plateformes de streaming en Afrique, en ayant comme référence normative la Convention de l'UNESCO de 2005 sur la diversité des expressions culturelles. Il examine des politiques culturelles africaines pouvant influencer la réglementation des plateformes de streaming musical, ainsi que l'activité de ces plateformes en Afrique en analysant les aspects politiques et économiques de leur développement et l'impact de leurs politiques de protection des données sur la musique écoutée par les utilisateurs, pour avancer, en conclusion, quelques recommandations.

Abstract

This chapter addresses the discoverability of music content on streaming platforms in Africa, having as a normative reference the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. It examines African cultural policies that may influence the regulation of online music streaming platforms, as well as the activity of those platforms in Africa by analyzing the political and economic aspects of their development and the impact of their data protection policies on the music listened to by users, to conclude with some recommendations.

Mots clés: Diversité culturelle – Politique culturelle – Protection des données – UNESCO – Diversité des expressions culturelles – Afrique – Plateformes de streaming.

Introduction

The present chapter aims at exploring, from an interdisciplinary perspective, the issue of discoverability of diverse cultural content[1] on selected music streaming platforms in Africa, having as a contextual and normative reference the 2005 UNESCO Convention on the protection and promotion of the diversity of cultural expressions ("CDCE"). The CDCE is indeed a milestone in the institutionalization of cultural diversity on the international political agenda. It is a legally binding document which legitimizes recourse to public policies, with a governance structure that accompanies, keeps track of, assesses, and guides what must be done to protect and promote the diversity of cultural expressions.

The CDCE is considered technologically neutral since its objectives and principles are valid with respect to all media technology, including digital media. In 2017 though, Operational Guidelines on the implementation of the CDCE in the digital environment were approved by the CDCE Conference of Parties to strengthen its implementation in the digital context. Two years later, these guidelines led to an update of the guidelines governing the quadrennial periodic reports ("QPRs") to be submitted by the CDCE Parties according to Article 9 (a) of the CDCE. From 2019 onwards, in accordance with a resolution of the Conference of the Parties,[2] these reports are expected to include information on measures and policies adopted with the purpose of implementing the CDCE in the digital age.

A key issue regarding the implementation of the CDCE in the digital environment relates to the discoverability of culturally diverse content online. In fact, to successfully attain, on the Internet, the objective of cultural diversity as it is pursued by the CDCE, Internet users need to be capable of finding such diversity amidst an increasingly growing offer of cultural content. This certainly depends on their access to the necessary technology infrastructure and equipment, sufficient digital media literacy, and the effective supply of a diversified offer of cultural content. But it also requires actual diversity in the consumption of cultural content by users, which is naturally impacted by how algorithms lead users to specific content. The present chapter considers thus two fundamental factors that may contribute to such discoverability: public cultural policies, and the behavior of the private actors that provide cultural content.

With a focus on Africa, this chapter analyses, in Section I, the QPRs of African CDCE Parties submitted from 2019 to 2021, as well as working documents presented at the

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1 The term "discoverability" is used in association with online cultural content to refer to the easiness for users to find such content. The discoverability of diverse cultural content online implies not only that diverse content is made available (diversity in supply), but also that users are able to effortlessly access such content (diversity in consumption).

2 UNESCO, *Resolutions*, dce/19/7.cp/res., 7th session of the Conference of Parties, Paris, 7 June 2019, https://fr.unesco.org/creativity/sites/creativity/files/sessions/7cp_resolutions_en.pdf (last accessed November 8, 2021).

CDCE statutory meetings concerning the topic. It aims to identify measures and policies adopted or endorsed by these Parties which address the development and regulation of the creation, production, distribution and/or consumption of cultural goods and services in the digital environment, and to examine such measures and policies from the analytical perspective of cultural policies. The data and conclusions provided in Section I result from a quantitative and qualitative analysis of QPRs by the authors. Section II then addresses political, economic, and legal aspects of the development of streaming platforms in Africa, with emphasis on four music streaming platforms: Boomplay, JOOX, Apple Music and Spotify. It briefly highlights the economic and political strategies carried out by these platforms in several African States, in certain cases from a comparative perspective with Netflix, a major audiovisual streaming platform. In addition, the section explores whether the activities of these platforms are beneficial or obstructive to the discoverability of cultural content online, including with respect to their data protection policies, with the aim of examining the way these private actors' algorithms may influence the consumption of cultural content listened to by users. It focuses on profiling practices of such platforms and their respect (or non-respect) of strong data protection principles, such as the ones enshrined in the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation – "GDPR"). Finally, the chapter concludes with recommendations that could be considered when addressing the promotion of discoverability of online music content in Africa.

I. The role of cultural policies in the discoverability of diversified African music online

Cultural diversity has become an economic asset in contemporary times. This explains why the trade and cultural debate became so relevant on the international agenda in the 90's and the 2000's. The political power of the countries that led the negotiation of the CDCE determined its initial focus on trade issues and on the support for cultural policies intended to ensure more balanced cultural markets. The flexibility for adopting and adapting cultural policies when negotiating international economic agreements remains fundamental today. In fact, "in the context of the new technologies, maintaining such freedom seems all the more essential as the evolution of the market of digital cultural contents is extremely dynamic, which calls for a fast and flexible intervention from States to respond to the challenges to cultural diversity".[3]

The process of dialogue and definition of priorities towards the CDCE implementation in the digital environment did not emerge from the Conference of the Parties,

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3 L. Richieri Hanania and A.-Th. Norodom (eds.), *Diversity of cultural expressions in the digital age*, Buenos Aires, Teseo, 2016, p. 19, www.teseopress.com/diversitedesexpressionsculturellesetnumerique/ (last accessed December 19, 2021).

its supreme body, but from the Intergovernmental Committee, its executive body, during its 7th session held in 2013.[4] At the 5th ordinary session of the Conference of the Parties in 2015, draft operational guidelines on the implementation of the CDCE in the digital age were requested,[5] and they were approved at the following session in 2017.[6] Such guidelines present, in a non-exhaustive manner, measures and policies that may be implemented by the Parties taking into account the different connections in the cultural value chain, as well as the diverse and uneven pace regarding the adoption and access to digital technologies.[7]

Since the adoption of these guidelines, the proposal of open roadmaps for the implementation of the CDCE in the digital environment[8] has gained prominence in the CDCE statutory meetings, with the indication of twenty priority activities based on the five objectives of the CDCE monitoring framework.[9] The open nature of the document is justified by the rapid evolution of technologies – the roadmap is expected to be periodically reviewed and adapted. With such roadmaps, the CDCE Parties are being urged to develop national strategies,[10] in which they may elect the activities they intend to implement within two to three years, considering their particularities, priorities, resources, needs, and challenges.

Seeking to understand the issue in the African context, a documentary survey of the QPRs submitted since 2019 was conducted, focused on countries of the African

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4 UNESCO, *Decisions*, ce/13/7.igc/dec., 7th ordinary session of the Intergovernmental Committee, Paris, 12 December 2013, https://fr.unesco.org/creativity/sites/creativity/files/sessions/7igc_decisions_en_final_1.pdf (last accessed November 8, 2021).

5 UNESCO, *Resolutions*, ce/15/5.cp/res., 5th ordinary session of the Conference of Parties, Paris, 12 June 2015, https://fr.unesco.org/creativity/sites/creativity/files/sessions/resolutions_5cp_en_0.pdf (last accessed November 8, 2021).

6 UNESCO, *Resolutions*, dce/17/6.cp/res., 6th ordinary session of the Conference of Parties, Paris, 15 June 2017, https://en.unesco.org/creativity/sites/creativity/files/sessions/resolutions_6cp_en.pdf (last accessed November 8, 2021).

7 UNESCO, *Operational guidelines on the implementation of the Convention in the digital environment*, 6th session of the Conference of Parties to the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Paris, 12-15 June 2017, https://fr.unesco.org/creativity/sites/creativity/files/sessions/digital_operational_guidelines_en.pdf (last accessed November 8, 2021).

8 UNESCO, *Item 9 of the provisional agenda: Road map for the implementation of operational guidelines to promote the diversity of cultural expressions in the digital environment*, dce/18/12.igc/9, 12th session of the Intergovernmental Committee for the Protection and the Promotion of the Diversity of Cultural Expressions, Paris, 13 November 2018, https://en.unesco.org/creativity/sites/creativity/files/12igc_9_roadmap_og_digital_en.pdf (last accessed November 8, 2021).

9 UNESCO, *Monitoring Framework*, Diversity of Cultural Expressions, https://en.unesco.org/creativity/convention/monitoring-framework (last accessed December 19, 2021).

10 As of November 2021, only three countries had submitted national roadmaps, namely, Canada (including Quebec), Germany, and the Republic of Korea (UNESCO, *National roadmaps developed by Parties*, DCE/21/8.CP/INF.10), 8th session of the Conference of Parties, Paris, 3 May 2021, https://fr.unesco.org/creativity/sites/creativity/files/sessions/8cp.inf10_national_roadmaps_en.pdf (last accessed November 8, 2021).

continent.[11] Twenty-eight reports were identified, three of which[12] were excluded for presenting information in a format that was different to the model proposed by UNESCO, totaling twenty-five reports of African Parties[13] whose set of cultural measures and policies were examined. The QPRs submitted to UNESCO by the CDCE Parties are available at the CDCE official website. All reported measures and policies have been tabulated by the authors to generate quantitative (percentages) and qualitative (examples) data.

The study of QPRs of African Parties to the CDCE reveals the importance of national digital strategies and initiatives in several of those countries, but also their disparity. This section aims to provide visibility to the wealth of initiatives reported by the African Parties in their QPRs, while considering, from a critical perspective, the particular reality of the implementation of the CDCE in African States. In fact, to better perceive the policies and strategies referred to in the QPRs analyzed, a brief overview of the political and institutional context of the covered African countries' cultural and creative sectors seems necessary.

First, 88% of the countries covered stated that they have a ministry or other institutions with a ministerial status that are responsible for implementing policies for the cultural and creative sectors, as well as decentralized administrative structures that develop cultural policies at regional, provincial, or local levels. Furthermore, 92% of those Parties indicate that, during the four years preceding their reports, regulatory, legislative, or institutional frameworks aimed specifically at supporting cultural and creative industries have been either adopted or revised, including through inter-ministerial cooperation. The budgetary reality of cultural policies brings, however, enormous challenges. Despite the variations of national currencies in relation to the American dollar, in the fifteen African countries[14] that displayed their annual public budget for culture in their QPRs, such budget varies from 1,000,000 USD to 27,000,000 USD, with the exceptions, on one hand of Eswatini, Gambia, Madagascar, Malawi and Tanzania with amounts lower than 500,000 USD and, on the other hand, of Algeria, Egypt and Ethiopia, whose figures are higher than 100,000,000 USD.

In relation to the development of specific education and training programs in the arts as well as in cultural and creative sectors, 88% stated that they develop such programs for the music sector, and 76% more generally for the digital culture and

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11 For the gathering of the QPRs, the geographic frame was prioritized, and all the reports sent by countries of the African continent were contemplated. This proposal differs from the organization adopted by UNESCO that distinguishes some of these States as "Arab countries", among which are Algeria and Egypt, for example.

12 Djibouti, Gabon, and Sudan.

13 Algeria, Burkina Faso, Cameroon, Comoros, Egypt, Eswatini, Ethiopia, Gambia, Ghana, Ivory Coast, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, South Sudan, Tanzania, Togo, Uganda, Zimbabwe.

14 Algeria, Burkina Faso, Egypt, Eswatini, Ethiopia, Gambia, Ghana, Madagascar, Malawi, Mali, Mauritius, Tanzania, Togo, Uganda, and Zimbabwe.

creative sectors. Countries like Burkina Faso, Cameroon and Lesotho indicated the creation of institutes, courses, and the strengthening of higher education in public and private universities in the field of fine arts and creative sectors, initiatives that add to professional and technical training actions,[15] such as the Yop Crealab in Ivory Coast which promotes centers for the application of digital technologies to cultural and artistic practices.[16] Zimbabwe, in its turn, considers culture at the basis of its educational system, with its incorporation into the curriculum of the primary and secondary levels of education.[17]

Regarding the expansion of professional opportunities and income, 76% of the covered African Parties stated that they have policies to support job creation in the cultural and creative sectors, and 80% develop measures to encourage the formalization and growth of micro, small, and medium-sized enterprises in the field of culture.

Among the experiences which seem the most relevant to this study, either by the scope of the initiative or by its relation to the promotion of music in the digital environment, Egypt can be featured as a notorious example with the implementation of a broad policy to promote inclusive development and socio-economic justice in the country, the "Sustainable Development Strategy (SDS): Egypt Vision 2030", which recognizes culture as one of the pillars of sustainable development. Among the objectives for the sector are the development of cultural institutions and industries, and the training of cultural agents; and as an action specifically directed towards the digital environment, the "Cultural Institution Development Program" stands out, offering support to the digitization of collections, and expanding access to Egyptian cultural heritage and artistic productions.[18] In Senegal, one of the policies to support musical and audiovisual production, based on a partnership between civil society and the Ministry of Culture and Communication, consists of the installation of public recording studios in cultural centers. These studios allow a qualitative leveling of production at a regional level and, above all, provide opportunities for artistic production at lower costs.[19] Another example is Zimbabwe's "Innovation Drive Project", which aims to enable innovative digital projects as well as job creation through information and

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15 Burkina Faso, *Quadrennial Periodic Report: Burkina Faso 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/5640 (last accessed November 8, 2021); Cameroon, *Quadrennial Periodic Report: Cameroon 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/6816 (last accessed November 8, 2021); Lesotho, *Quadrennial Periodic Report: Lesotho 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/6898 (last accessed November 8, 2021).

16 Ivory Coast, *Quadrennial Periodic Report: Ivory Coast 2021*, https://es.unesco.org/creativity/governance/periodic-reports/submission/7672 (last accessed November 8, 2021).

17 Zimbabwe, *Quadrennial Periodic Report: Zimbabwe 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/4217 (last accessed November 8, 2021).

18 Egypt, *Quadrennial Periodic Report: Egypt 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/6924 (last accessed November 8, 2021).

19 Senegal, *Quadrennial Periodic Report: Senegal 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/3910 (last accessed November 8, 2021).

communication technologies (ICTs) in various sectors of the cultural economy, including the music sector. There are already twelve incubation centers derived from this policy in operation in the country.[20]

Regarding policies which are fundamentally linked to the strengthening of the digital market and, consequently, to the generation of income for workers in the music chain, 76% of the covered African Parties have policies, measures or mechanisms in place to support the digital transformation of cultural and creative industries and institutions, and, in 68% of them, initiatives have been developed to promote digital creativity and skills of artists and other cultural professionals working with new technologies. To ensure that domestic digital cultural and creative markets are composed of various e-players, 64% of the covered countries have introduced measures aimed, among others, at controlling market concentration, preventing monopolies of digital content providers/distributors, and developing rules for fair remuneration of artists.

As with the other fronts of regulatory and political incidence presented above, the examined QPRs demonstrate a large variety of contexts and development stages among African countries in the achievement of initiatives. For instance, Malawi and Mauritius, through inter-ministerial actions articulated with national institutions and associations, have created platforms for the free availability and purchase of works, not only in the music sector, but also in other artistic segments.[21] In Mali, the Malian Broadcasting and Transmission Company, a public body created in 2015, is dedicated to expanding and managing the State's telecommunication structure and supporting digital transformation. Its actions are articulated with those of the Universal Access Fund Management Agency and the National Policy for the Development of the Digital Economy. The latter has been, since 2016, a reference for the Malian government in the implementation of actions directed at reducing digital exclusion, producing and offering digital content, diversifying and ensuring security and reliability in the uses of digital service, as well as creating an ecosystem favorable to the development of the digital industry.[22] Ghana, in its turn, has invested in expanding the digital landscape by building an integrated national ICTs infrastructure, and providing a regulatory framework to use such infrastructure as a platform for e-government services and the facilitation of public-private partnerships. Furthermore, the country has strengthened its National Creative Arts Council and its regulatory framework to implement more effective measures related to copyright, as well as programs for creative industries.[23]

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20 Zimbabwe, *Quadrennial Periodic Report*, *op. cit.*

21 Malawi, *Quadrennial Periodic Report: Malawi 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/4060 (last accessed November 8, 2021). Mauritius, *Quadrennial Periodic Report: Mauritius 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/3830 (last accessed November 8, 2021).

22 Mali, *Quadrennial Periodic Report: Mali 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/5560 (last accessed November 8, 2021).

23 Ghana, *Quadrennial Periodic Report: Ghana 2021*, https://es.unesco.org/creativity/governance/periodic-reports/submission/8261 (last accessed November 8, 2021).

The national policy and strategic framework "Digital Uganda Vision" reviews, integrates, consolidates, and improves all the existing ICTs strategies, policies and plans under one overarching digital vision for Uganda and provides a unified direction for ICTs development and implementation.[24] The "Digital Senegal Strategy 2016-2025" expresses the ambition to stimulate digital transformation and makes the country a continental reference in the digital environment.[25]

The multiplicity and discrepancy of policies for the digital music environment, which widely vary in their scope (e.g. coverage of specific activities and/or agencies, or targeted at the music sector at large) and organizational design, demonstrate that, in addition to addressing the specifics of the online market for cultural goods and services, it is critical for African states to invest in strengthening the physical and institutional infrastructure in order to ensure their citizens' access to the digital universe, as well as better placement for national content in a globally competitive environment. The development of research and data in this field is notably featured as a necessity for most of the examined countries. The statistical or quantitative research to produce cultural data and indicators are still precarious, and less than 50% of the covered Parties have updated their data, whether related to the cultural and creative sectors or to the evaluation of cultural policies.

In the same line, although 60% of the examined countries have implemented policies and measures to improve access to and discoverability of domestically produced cultural content in the digital environment, the capacity to monitor, for example, the type of cultural content available online is very low, with only 24% of the countries being able to provide recent data on digital media. Only eight countries were able to provide the percentage of their population with subscriptions to online cultural content providers, and these show huge disparities. While in countries like Ghana, Eswatini, Zimbabwe and Egypt such percentages vary from 45 to 70%, in countries like Nigeria, Mali, Burkina Faso and Uganda, they vary from 0 to 15%.

Another topic of great concern is the protection of copyright (on compositions) and related rights (on phonograms and performances). All the analyzed QPRs mention actions, agreements and/or policies related to the strengthening of the copyright framework. There are varied paths taken as well as administrative and financial institutions linked to the protection of copyright and related rights in African countries, such as the Tanzania Copyright Society,[26] the Mozambican Authors Society,[27] the

24 Uganda, *Quadrennial Periodic Report: Uganda 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/3825 (last accessed November 8, 2021).

25 Senegal, *Quadrennial Periodic Report*, *op. cit.*

26 Tanzania, *Quadrennial Periodic Report: Tanzania 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/3832 (last accessed November 8, 2021).

27 Mozambique, *Quadrennial Periodic Report: Mozambique 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/6969 (last accessed November 8, 2021).

Gambian Copyright Office,[28] the Lesotho Society of Authors and Artists,[29] the Comorian Intellectual Property Office,[30] among others. In Burkina Faso, the Copyright Office, in addition to collecting and distributing royalties, has instituted a system of social assistance for associated artists, given the specificities of the work regime of these professionals.[31] In Ethiopia, the creation of the Ethiopian Music Copyrights and Neighboring Rights Collective Management Organization is an achievement celebrated by the Ethiopian Music Sectors Association Union after decades of struggles. The association has been working to make royalties on music a reality in Ethiopia since 2019. It has been able to mobilize the artistic community to stand together to protect their economic rights and has also established collaboration with the World Intellectual Property Organization (WIPO) and other organizations regarding the implementation of royalties in Ethiopia in exchange for receiving technology support and other related training.[32] Rwanda is building dialogue and governance platforms with legislative institutions on intellectual property.[33] In Egypt, agreements with large companies such as Google and its affiliated YouTube have been executed, like the one that allowed the National Media Authority (Maspero) to protect the massive media content it owns by preserving its rights with a digital fingerprint. The institution also owns and manages multiple companies in the field in varying proportions, as well as a website through which Egyptian artists can access digital media and live broadcasting.[34] Another example is the Senegalese Society for Copyright and Related Rights (SODAV), which not only carries out the management of copyright and related rights, but also concludes general contracts with radio and television networks and digital platforms for the downloading and streaming of musical content with the aim of promoting national artists in the international digital market.[35]

Finally, with respect to the CDCE goal of ensuring a more balanced international circulation of cultural goods and services, in particular in the online context, 68% of the Parties examined have export strategies or measures in place to support the distribution of cultural goods and services in the music sector, and 40% of those countries have benefited from Article 16 of the CDCE on preferential treatment, aimed at creating more balanced exchanges of cultural goods and services with developing countries. However, in the four years preceding their reports, only four countries

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28 Gambie, *Quadrennial Periodic Report: Gambia 2019*, https://es.unesco.org/creativity/governance/periodic-reports/submission/3820 (last accessed November 8, 2021).

29 Lesotho, *Quadrennial Periodic Report*, *op. cit.*

30 Comoros, *Quadrennial Periodic Report: Comoros 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/6918 (last accessed November 8, 2021).

31 Burkina Faso, *Quadrennial Periodic Report: Burkina Faso 2020*, *op. cit.*

32 Ethiopia, *Quadrennial Periodic Report: Ethiopia 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/5557 (last accessed November 8, 2021).

33 Rwanda, *Quadrennial Periodic Report: Rwanda 2020*, https://es.unesco.org/creativity/governance/periodic-reports/submission/6957 (last accessed November 8, 2021).

34 Egypt, *Quadrennial Periodic Report*, *op. cit.*

35 Senegal, *Quadrennial Periodic Report*, *op. cit.*

(Algeria, Gambia, Mozambique, and Uganda) were granted Aid for Trade support, a form of Official Development Assistance (ODA) that contributes to the formulation of trade policies, the participation in negotiation processes and the implementation of agreements that provide a special status to cultural goods and services of these countries. Also, no examples of co-production and co-distribution agreements to reduce asymmetries in this market were reported[36] and challenges remain regarding the negotiation of cultural exception clauses in trade and investment agreements applicable to e-commerce and digital products, whose impact also depends on a systemic evaluation and strategy that is still absent in most countries, including African Parties to the CDCE.[37] In fact, 76% of the covered Parties stated that they had been involved in negotiation processes or had signed multilateral or bilateral trade and/or investment agreements that provide a special status to cultural goods and/or services, and 76% were negotiating or held agreements of this nature which specifically cover the field of e-commerce. However, most of the multilateral agreements portrayed in the QPRs concern artistic exchange, exhibitions, or trade in cultural products, and rarely report on the challenges of the digital environment.

The analysis conducted above leaves no doubt on the need and relevance of updating cultural policies in an emerging and constantly changing digital ecosystem which gives rise to new players in the creation, production, distribution, and access to cultural products and services of local and transnational content. However, the QPRs also reveal significant challenges for those seeking space to launch themselves on global platforms, which emerge as another demand for national scenarios that are confronted to different kinds of urgency. While the CDCE pushes for certain issues to be treated as a priority, this should not result in a mimetic reproduction of cultural policies, to the detriment of addressing specific problems related to cultural diversity in different countries. The historic trajectory of cultural policies, the generally low budget for culture, and the multiple understandings about what the diversity of cultural expressions means in practice are some of the factors that need to be accounted for when analyzing the implementation of the CDCE in countries of the Global South.

Based on their specificities and particular needs and strengths, another fundamental aspect to be considered when designing and improving national digital strategies is the way African countries may deal with private regional and global platforms aiming to increasingly explore the vast economic potential of the African music market – and what they could require as conditions from such private players in return.

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36 UNESCO, *Item 10 of the provisional agenda: Status report on the national roadmaps for the implementation of the Convention in the digital environment*, dce/21/8.cp/10, 3 May 2021, https://fr.unesco.org/creativity/sites/creativity/files/sessions/8cp_10_roadmap_digital_en.pdf (last accessed November 8, 2021).

37 *Ibid.*

II.   The role of private streaming platforms in the discoverability of diversified African music online

The discoverability of diverse cultural content in the African online music market also relies on the recent economic activities of global and regional streaming platforms. This section aims to emphasize the economic interdependence and strategic alliances between these platforms and the key concerns of the actors involved in the digital music industry in Africa. It also examines the way these platforms process personal data, particularly for personalization purposes, and the impact such personalized services may have in promoting (or not) the discoverability of cultural content online. The section focuses on recent actions carried out by four music platforms in the African continent, in certain cases compared to the action of Netflix as a similar leading streaming platform in the audiovisual sector.

A. African market specificities and cultural diversity

Studies by the International Federation of the Phonographic Industry (IFPI), which represents the major record labels, such as Universal, Sony and Warner, recently described the growth of the music sector and particularly of music streaming in Africa as follows:

> "recorded music revenues in the Africa & Middle East region increased by 8.4% in 2020. This was driven primarily by the Middle East & North Africa (MENA) region, where revenues rose by 37.8%. Streaming dominated, with revenues up 36.4%. South Africa and MENA combined accounted for 86.7% of the region's revenues". [38]

The high potential of the African music industry, and notably its music-streaming market, explains why big Western tech companies (notably from the United States) are in head-to-head competition with Chinese platforms for stronger market shares in Africa.

In mid-March 2021, the Nigeria-based music streaming service Boomplay and Universal Music Group (UMG) signed an expanded agreement in order to extend licensing of UMG's music catalog from seven to forty-seven countries across the African continent. New markets include, among others, South Africa, Ethiopia, Cameroon, and Senegal. [39] Boomplay launched in 2015 and is currently one of the main pan-African

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[38] International Federation of the Phonographic Industry, *Global Music Report: The Industry in 2021*, IFPI, 2021, www.ifpi.org/wp-content/uploads/2020/03/GMR2021_STATE_OF_THE_INDUSTRY.pdf (last accessed November 8, 2021).

[39] Universal Music Group, *Universal Music Group and leading African streaming service Boomplay expand license to cover 47 countries across the continent*, 17 March 2021, www.universalmusic.com/universal-music-group-and-leading-african-streaming-service-boomplay-expand-license-to-cover-47-countries-across-the-continent/ (last accessed November 15, 2021).

and rapidly growing music streaming services. In July 2018, it had 17 million monthly users, whereas in June 2020 it reached 75 million users, with 86% of them living in sub-Saharan Africa. Boomplay is owned by Transsion Holdings, the China-based top phone-maker in Africa, and NetEase, a Chinese Internet company that has its own large NetEase Cloud Music Service in its homeland. As Quartz Africa noticed,[40] "[m]uch of Boomplay's growth is driven by coming pre-installed on Transsion smartphones".

Tencent-owned music streaming platform JOOX, made its debut in 2017 in South Africa, as its first non-Asian market, planning to roll out its services to other music markets in Africa.[41] However, JOOX announced an abrupt closing in South Africa by March 2022.[42] JOOX, controlled by the Chinese tech giant, is one of the largest music platforms in several countries in South East Asia, such as Malaysia, Indonesia, Myanmar and Thailand.

At the end of April 2020, Apple Music, previously available in thirteen African countries including South Africa, Nigeria, and Kenya, announced the extension of its services to twenty-five more countries, such as Angola, Algeria, and Senegal. It is today available in thirty-three countries in Sub-Saharan Africa.[43] At the end of February 2021, Spotify also announced its significant launch into thirty-nine additional African countries, including Angola, Cameroon, Nigeria, Senegal, Zambia, and Uganda.[44]

The four platforms have not overlooked the economic importance of exploiting Africa's cultural richness and providing their users with African music content. During the music summit NY:LON Connect,[45] Boomplay managing director, Martha Huro, revealed that 70% of Boomplay streams are made on African content, adding that today "[their] greatest competition is piracy" and not other digital service providers. Apple Music's expansion in the continent is also clearly accompanied by a targeted

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40 Y. Kazeem, "The largest music streaming service in Africa raised $20 million to fight off global rivals", *Quartz Africa*, 5 April 2019, https://qz.com/africa/1588155/transsions-boomplay-gets-20-million-series-a-for-african-music (last accessed November 30, 2021).

41 A. Vlassis, "Online platforms, culture and regulation issues in Africa", *Global Watch on Culture and Digital Trade*, n° 9, 2020, https://ficdc.org/en/publications/online-platforms-culture-and-regulation-issues-in-africa/ (last accessed December 10, 2021).

42 M. Illidge, "Joox streaming service shutting down in South Africa", *My Broadband*, 19 November 2021, https://mybroadband.co.za/news/it-services/423702-joox-streaming-service-shutting-down-in-south-africa.html (last accessed December 13, 2021).

43 A. Vlassis, "Toward stronger regulatory cooperation regarding digital issues", *Global Watch on Culture and Digital Trade*, n° 19, 2021, https://ficdc.org/en/publications/toward-stronger-regulatory-cooperation-regarding-digital-issues/ (last accessed December 10, 2021).

44 A. Vlassis, "Policy and economic challenges for the governance of online platforms", *Global Watch on Culture and Digital Trade*, n° 14, 2021, https://ficdc.org/en/publications/policy-and-economic-challenges-for-the-governance-of-online-platforms (last accessed December 10, 2021).

45 B. Seroto, "Boomplay: 70% of our streams come from African content", *MUSICinAFRICA*, 27 January 2021, www.musicinafrica.net/magazine/boomplay-70-our-streams-come-african-content (last accessed December 10, 2021).

strategy for dynamically promoting local artists and content. In July 2020, Apple Music launched a new artist discovery program in Africa called "Africa Raising" aimed at identifying, showcasing and elevating rising African talent and, in March 2021, it launched its campaign "Africa to the World", a collection of original and exclusive content from the continent's artists.

Given the African market specificities, Spotify developed new payment methods for its African customers in order to consolidate its presence in the continent and benefit from the growing mobile phone use. In fact, in the African market, an issue for several digital operators relates to payment in a continent where many people, despite having a mobile phone, do not have a checking account. As Phiona Okumu, Spotify's head of music for Sub-Saharan Africa, stressed, "a lot of African countries are unbanked so that means they don't use credit cards and this is very true for a lot of East African countries. In Kenya, you use M-Pesa for the most part".[46] Spotify secured, therefore, alternative payment methods, such as M-Pesa, when it moved into Kenya in February 2021. M-Pesa, owned by telecom operator Safaricom, is used to ship money, save, borrow, and make payment for goods and services. In 2020, sub-Saharan Africa had 548 million mobile money accounts, up 12% compared to 2019, more than any other region across the globe.[47] At the end of October 2021, Spotify announced the launch of Spotify Premium for Students in twenty new countries, especially in the Middle East and Africa, including South Africa, Egypt, Lebanon, Morocco, Bahrain, and Qatar. The offer is open to eligible university students, who could have the benefits that come with being a Premium subscriber for discounted price.[48]

The need to adapt its market practices to strengthen its presence in the African region is not exclusive to music streaming platforms. Netflix, as the world's largest subscription streaming service with around 195 million subscribers across the globe, has also been clearly adapting to the specificities of the African digital market related to the boom of mobile internet and the growing use of mobile phones. Due to its economic weight, Netflix may also influence the way other streaming platforms develop in the region.[49] The Californian company has added around 28 million subscribers since January 2020. More than 80% of the new subscribers came from outside North America.[50] However, as Bloomberg mentions,[51] several years after it arrived in

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46 N. DLUDLA and S. MUKHERJEE, "Music streamers turn to telcos to make Africa pay", *Reuters*, 15 October 2021, www.reuters.com/world/africa/music-streamers-turn-telcos-make-africa-pay-2021-10-12/#:~:text=Boomplay%2C%20which%20has%2060%20million,and%20media%20relations%2C%20told%20Reuters (last accessed December 13, 2021).

47 A. VLASSIS, "Online platforms, culture and regulation issues in Africa", *op. cit.*

48 A. VLASSIS, "Toward stronger regulatory cooperation regarding digital issues", *op. cit.*

49 A. VLASSIS, "Policy and economic challenges for the governance of online platforms", *op. cit.*

50 A. VLASSIS, "Online platforms, culture and regulation issues in Africa", *op. cit.*

51 T. ALAKE and T. PFEIFFER, "Netflix bets on mobile blitz to strengthen Africa foothold", *Bloomberg*, 28 September 2020, www.bloomberg.com/news/articles/2020-09-29/netflix-bets-on-mobile-content-blitz-to-strengthen-africa-grip (last accessed December 13, 2021).

Africa, Netflix is struggling to grow beyond the wealthiest segment of the population. Since 2015, Netflix has expanded to fifty-four countries in the African continent. Netflix may end the year 2021 with 2.61 million streaming subscribers in Africa. According to the Hollywood Reporter,[52] "South Africa and Nigeria will each supply 2.3 million and will be the only countries in Africa with more than 1 million subscriptions".

As Spotify, Netflix has also adapted to the boom of mobile internet users in Sub-Saharan Africa. The Californian company will even experiment with cheaper, mobile-only subscriptions and commission more locally produced shows. An important battleground will be Nigeria, sub-Saharan Africa's biggest economy and key player of the African TV industry. Netflix is now testing if viewers will buy the mobile-only service at 1,200 naira (2.65 US dollars) a month, an amount clearly lower than the 2,900 naira for a Netflix basic account. This offer is, nevertheless, still higher than the offer of 250 naira per month by Iroko, a Nigerian streaming platform focusing on Nollywood content.[53] Before Nigeria, Netflix started this mobile trial in South Africa and Egypt. As Techpoint.Africa recalls,[54] Netflix has also liaised with network carriers in South Africa to allow users without a bank account to subscribe with airtime or prepaid vouchers.

As the music streaming platforms referred above, Netflix also seeks to diversify its content offer and in May 2021, it launched the initiative "Made by Africa, Watched by the World". Its goal is to mix new, original content from African creators with older African classics that have not previously been streamed elsewhere. Through this initiative, Netflix aims to demonstrate its commitment to the continent and its creative community.[55] The selection features the South African films "Gangster's Paradise: Jerusalema" and "Tsotsi", or the Nigerian films "King of Boys" and "Lionheart", as well as Netflix original productions such as "Queen Sono" and "Blood & Water". Following this initiative, Dorothy Ghettuba, Netflix's head of "Africa Originals", stated that "we want you to know that if you're looking for the best African stories, then you will find them on Netflix".[56]

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52 G. Szalai, "Netflix May Reach 2.6M Subscribers in Africa by End of 2021, Analyst Estimates", *The Hollywood Reporter*, 26 August 2021, www.hollywoodreporter.com/business/business-news/netflix-streaming-subscribers-africa-disney-amazon-1235003531 (last accessed December 13, 2021).

53 The Covid-19 pandemic and the devaluation of the local currency (naira) have strongly hit Irokotv, which has around 0.3 million subscribers today. See A. Vlassis, "Online platforms, culture and regulation issues in Africa", *Global Watch on Culture and Digital Trade*, n° 9, 2020, https://ficdc.org/en/publications/online-platforms-culture-and-regulation-issues-in-africa (last accessed December 10, 2021).

54 O. Kolawole, "Why Netflix needs more than cheap plans to drive massive growth in Africa", *Techpoint.Africa*, 9 October 2020, https://techpoint.africa/2020/10/09/netflix-africa-mobile-only-plan (last accessed December 10, 2021).

55 A. Vlassis, "Policy and economic challenges for the governance of online platforms", *op. cit*.

56 T. Charisma, "Netflix in Africa", *Business Insider*, 23 September 2020, www.businessinsider.fr/us/how-netflixs-african-originals-show-commitment-to-the-continent-2020-9 (last accessed December 10, 2021).

With the aim of consolidating a sort of legitimacy in the continent's cultural market and proposing cultural content that is more respectful of cultural diversity, these large streaming platforms have also been strengthening their influence towards national and international authorities. This has been clearly observed in the audiovisual sector with Netflix: Netflix and the South African National Film and Video Foundation announced a new partnership[57] seeking to fund the production of South African micro-budget feature films. The agreement includes an investment of 14 million rands (around 9.6 million US dollars) from each partner, which will fund six local films, including four feature films with a budget of 4 million rands (2.6 million US dollars) each, and two feature films with a budget of 6 million rands (4 million US dollars) each. In addition, in November 2021, Netflix and UNESCO established a partnership for launching a short film competition on "African Folktales, Reimagined" across sub-Saharan Africa.[58] Each of the six winners will be trained by industry professionals and will receive a production grant of 75,000 US dollars through a local company to develop, shoot and post-produce their films under the guidance of Netflix. The six short films will premiere on Netflix in 2022 as an "Anthology of African folktales". Finally, in January 2022, Netflix announced a commitment of 1 million US dollars towards the Netflix Creative Equity Scholarship Fund (CESF) for film and TV students in Sub-Saharan Africa. The scholarship fund forms part of Netflix's global CESF launched in 2021 with an investment of 100 million US dollars over the following 5 years.[59] With respect to the music sector, it will be crucial to observe if, in the near future, music-streaming platforms will also seek to establish public-private partnerships in order to boost the production of local cultural content and its dissemination worldwide, as well as to strengthen their legitimacy towards creators and culture professionals of the continent.

The concern of the above-mentioned platforms for a greater and more diversified offer of African content as a means of strengthening their market presence and benefitting from the richness of the African music sector seems, nevertheless, to still belittle the role of these platforms' algorithms as a tool to effectively promote discoverability.

B. Discoverability and personalized streaming services

Services provided by streaming platforms are largely based on algorithms-driven automated processing of users' data to provide personalized recommendations of

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57 S. Writer, "Netflix invests R14 million to fund 'micro' movies in South Africa", *BusinessTech*, 18 March 2021, https://businesstech.co.za/news/technology/477002/netflix-invests-r14-million-to-fund-micro-movies-in-south-africa (last accessed December 10, 2021).

58 A. Vlassis, "Toward stronger regulatory cooperation regarding digital issues", *op. cit.*

59 A. Vlassis, "Streaming platforms in digital cultural governance: between global expansion and increasing legal obligations", *Global Watch on Culture and Digital Trade*, n° 27, 2022, https://ficdc.org/en/publications/streaming-platforms-expansion (last accessed November 11, 2022).

content.[60] In fact, personalization seems to be often considered as an essential feature of the service provided by streaming platforms and, as such, processing of personal data for the purpose of providing customized content suggestions is often considered as justified by the need to perform the services contract with the platform. However, users' cultural consumption online through such platforms are strongly influenced by the way content is presented and recommended to them.[61]

While personalized content recommendations may meet a need to filter an increasing volume of content online that can be overwhelming for a user, the lack of human intervention in the personalization choices makes this process obscure and not easily understandable. Also, the effects of these decisions on consumers, such as limiting a user to previously expressed preferences, are evidently not conducive to cultural diversity and the discoverability of new culturally diverse content.[62] In fact, since personalized recommendations are usually based on previous consumption and habits, as well as on the popularity of content in a given location (or on information collected in a user's social network), the tendency seems to be, on the contrary, to lock users into bubbles defined by their previous choices or those of their entourage.

By processing users' personal data to evaluate a person's preferences, interests, habits and behaviors, such platforms create automated profiles based on a certain assessment or judgement about that specific person. As the Article 29 Data Protection

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60 On the way profiling and recommendation algorithms may affect the discoverability of cultural content, with a focus on the European Union, see L. RICHIERI HANANIA, "Analyse du cadre réglementaire européen (RGPD)" and "Annexe 2: Regards d'experts européens", in D. TCHÉHOUALI, C. VODOUHÉ, L. RICHIERI HANANIA and W. GRONDIN, *Impacts des algorithmes de recommandation des plateformes de streaming sur la protection de la vie privée des utilisateurs canadiens – Rapport de recherche remis au Commissariat à la protection de la vie privée du Canada (CPVP), dans le cadre du projet "ALTER ALGO, les algorithmes sont-ils vraiment nos alter ego numériques?"*, 2022, www.alteralgo.ca/wp-content/uploads/2022/01/ISOC-Que%CC%81bec-Rapport-Alter-Algo.pdf (last accessed January 6, 2022), pp. 42-51 and 96-99.

61 For instance, in 2018 it was estimated that YouTube's recommendation algorithm influenced 70% of what users watched. See A. RODRIGUEZ, "YouTube's recommendations drive 70% of what we watch", *Quartz*, 13 January, 2018, https://qz.com/1178125/youtubes-recommendations-drive-70-of-what-we-watch (last accessed December 16, 2021).

62 On the discoverability of cultural content online and digital platforms, see for example, F. BENHAMOU, "Les industries culturelles. Mondialisation et marchés nationaux", *L'Économie à l'heure du numérique – Cahiers français*, n° 392, 2016; L. RICHIERI HANANIA and A.-Th. NORODOM (eds.), *Diversity of cultural expressions in the digital age*, *op. cit.*; P. M. NAPOLI, *Content diversity in the digital age: discoverability of diverse content at local, regional and national levels*, Discussion Paper, 7-8 February 2019, https://culturenumeriqc.qcnum.com/wp-content/uploads/2019/03/Napoli-De%CC%81couvrabilite%CC%81-de-contenu-diversifie%CC%81-aux-e%CC%81chelons-local-re%CC%81gional-et-national.pdf (last accessed December 16, 2021); M. BURRI, *Discoverability of local, regional and national content online: mapping barriers to access and the potential for new guidance tools*, Discussion Paper, 2019, www.researchgate.net/publication/332223205_DISCOVERABILITY_OF_LOCAL_NATIONAL_AND_REGIONAL_CONTENT_ONLINE_MAPPING_ACCESS_BARRIERS_AND_CONTEMPLATING_NEW_ORIENTATION_TOOLS_Discoverability_of_local_national_and_regional_content_online (last accessed December 16, 2021).

Working Party- an independent European advisory body on data protection and privacy, explains it:

> "Profiling is a procedure which may involve a series of statistical deductions. It is often used to make predictions about people, using data from various sources to infer something about an individual, based on the qualities of others who appear statistically similar."[63]

To ensure that neither the decisions taken as a result of automated processing or profiling, nor the collection of personal data for the creation of profiles and the application of these profiles to individuals have an unjustified impact on users' rights, data privacy laws such as the GDPR set out obligations for companies and specific rights for individuals.

According to GDPR principles, all streaming platforms should provide their users with concise, transparent, intelligible, and easily accessible information on what types of data are collected (e.g., searches, title selections, tracks listened to, user location, usage patterns), how they are processed, what automated mechanisms are applied, according to what underlying logic and with what consequences, including profiling and decisions made based on the profile created (e.g., the proposal of personalized content recommendations). Since processing for profiling purposes is particularly prone to error because it involves inferences, as well as data taken out of context and combined to produce predictions, attention should also be paid to the accuracy of the data used, as well as any hidden biases naturally arising from the fundamentally human perception of the data scientists who created the algorithms used. On this matter, users should be informed on the criteria used by the algorithms applied to the information collected from them, as well as the categories or segments considered for the definition of their profiles. Users should be able to object to the processing of their data for profiling purposes, challenge incorrect information on them or a category in which they have been included following profiling and be given the opportunity to contribute to the definition of a more accurate profile – and, of course, be clearly informed of all those options.

Such a level of transparency and protection of rights seems to be insufficiently respected by the selected music streaming platforms examined in this chapter, including those providing services globally. While the level of detail of the explanation provided to users may vary, the four platforms list the types of data collected and the fact that usage data will serve the purpose of services personalization. The precise criteria considered by algorithms and how users are categorized in specific profiles is however not explained, and users are not given efficient tools to modify a profile. Erasing personal data or challenging its processing may in certain cases simply lead to the cancelation of services.

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63 Art. 29 Data Protection Working Party, *Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679*, 17/EN WP251rev.01, 3 October 2017, as last Revised and Adopted on February 6, 2018, p. 7, www.cnil.fr/sites/default/files/atoms/files/20171025_wp251_enpdf_profilage.pdf (last accessed December 16, 2021).

For instance, Boomplay's Privacy Policy[64] starts with a long list of types of personal data processed by Boomplay, including, among many others, behavioral information (e.g., comments or content posted, views and repeated views, interactions, likes and shares), location data, gender, and age. Automated decision-making, including profiling, "will solely be used in optimizing the Services and tailoring it to your preferences."[65] Such preferences seem to be inferred based on the user's region, content already liked or interacted with, and content from other users followed by a particular user. The risk of keeping users into bubbles that may not provide for enough discoverability of diversified content seems to be high. While a user does not seem to be able to challenge the content suggestions received, he/she may wish to not have personalized content by disabling functionality cookies together with other cookies used by the platform.

JOOX's International Privacy Notice[66] refers to different data protection laws, and the GDPR may be applicable to certain users. However, how users' personal information is processed for purposes of profiling is not well explained. While JOOX's Privacy Notice explicitly indicates that information collected from users, including browsing behavior and media stored or streamed on a user's device is used "to understand [the user's] interests and preferences and provide [the user] with a more personalized experience",[67] how JOOX processes the collected personal information to define such preferences is not further explained. In the event that consent is the legal ground for processing personal information – situations which are not detailed in JOOX's Privacy Notice –, consent may be withdrawn, but it is not explained whether nor how such withdrawal relates to profiling for platform customization and content recommendation purposes.[68]

Apple's Privacy Policy[69] starts by highlighting its applicability to personal data collected from users all over the world. Data collected regarding the use of services relate to the user's activity on Apple's offerings, such as app launches, browsing history, search history, product interaction, crash data, diagnostic data, "and other usage data", this latter category not being specified. While Apple recognizes users' right, among others, to restrict the processing of personal data or request its deletion and affirms

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64 Boomplay, *Boomplay Privacy Policy*, effective as of October 26, 2020, www.boomplay.com/privacyPolicy (last accessed on November 8, 2021). While a quite detailed privacy policy is provided, Boomplay Privacy Policy interestingly states that "We take steps to ensure that your information is treated securely and in accordance with this policy. Unfortunately, the transmission of information via the internet is not completely secure. Although we will do our best to protect your information, for example, by encryption, we cannot guarantee the security of your information transmitted through Boomplay; thus, any transmission is at your own risk."

65 *Ibid.*

66 Joox, *Privacy Notice*, Joox International Website, Updated November 9, 2021, www.joox.com/en_my/app/privacy_policy.html#Use (last accessed 7 November 2022).

67 *Ibid.*

68 *Ibid.*

69 Apple, *Apple Privacy Policy*, Updated October 27, 2021, www.apple.com/legal/privacy/pdfs/apple-privacy-policy-en-ww.pdf (last accessed March 7, 2022).

that the exercise of such privacy rights will not imply a discriminatory treatment of the user nor the provision of less service from Apple, the same Privacy Policy states that "[y]ou are not required to provide the personal data that we have requested. However, if you choose not to do so, in many cases we will not be able to provide you with our products or services or respond to requests you may have."[70]

The same reasoning applies to cookies allowing for a customized experience – a user may disable them, but some features may not be available if all cookies are disabled. Regarding Apple's use of the data collected, one of the purposes of processing personal data is "to power [Apple's] services", including to improve offerings. Personalization of services is presented as an option offered to the user and from which a user should be able to opt-out.

Specifically with respect to Apple Music,[71] data collected on songs played, the time they were played and how long they were played is said to be processed not only to provide the user with the content requested and for royalty purposes,[72] but also for personalization and customized "notification about upcoming releases, new artists, and other happenings on Apple Music that [the user] may like", as well as "recommendations [...] that reflect [the user's] tastes" and city charts that show trending music in specific locations.[73] No information is provided on how Apple makes decisions about what a user may like or what are his/her tastes. More interestingly, Apple's Privacy Policy indicates that "Apple does not use algorithms or profiling to make any decision that would significantly affect you without the opportunity for human review." Such human review and how to request it is nevertheless not clearly explained.

Finally, according to Spotify's Privacy Policy,[74] collected usage data includes information about the use of Spotify's services, which comprise, among others, search queries, streaming history, playlists, library, browsing history, account settings, interactions with other Spotify users, use of third-party services in connection with the Spotify Service, as well as "[i]nferences (*i.e.*, [Spotify's] understanding) of your interests and preferences based on your usage of the Spotify Service",[75] and non-precise location. A Privacy Center page[76] has recently added user-friendly videos which more clearly explain to users how their data is collected, how it serves personalization, and what privacy controls a user may have. A specific video on personalization defines Spotify as a "personalized audio service" and explains in a non-legalistic language how information collected using Spotify's services (songs played, playlists created) lead to

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70 *Ibid.*

71 See Apple's Privacy Policy specifically applicable to Apple Music: Apple, *Apple Music & Privacy*, www.apple.com/legal/privacy/data/en/apple-music (last accessed November 8, 2021).

72 Apple, *Apple Privacy Policy*, *op. cit.*

73 Apple, *Apple Music & Privacy*, *op. cit.*

74 Spotify, *Spotify Privacy Policy*, Effective as of 1 September 2021, www.spotify.com/us/legal/privacy-policy (last accessed November 8, 2021).

75 *Ibid.*

76 Spotify, *Privacy Center*, www.spotify.com/us/privacy (last accessed November 8, 2021).

personalized suggestions from Spotify. The legal bases that allow for processing of personal data for personalized services are listed as: the performance of a contract (e.g., the user's services contract with Spotify), the consent of the user, and the legitimate interest of Spotify (e.g., improving services for all users or paying royalties for content listened to). In addition, a specific section of Spotify's Privacy Policy lists users' rights, among which some could have an impact on customized recommendations. For instance, a user may easily erase audio content or playlists linked to his/her profile, but erasure of any other personal data seems to imply closing the user's account. Specifically on profiling, when listing users' rights arising from the GDPR, Spotify explicitly states the right "[n]ot be subject to a decision based solely on automated decision making (decisions without human involvement), including profiling, where the decision would have a legal effect on you or produce a similarly significant effect." To exercise such right, the user is directed – without further explanation – to Spotify's Data Protection Officer.

With the purpose of promoting cultural diversity on music streaming platforms, users should be able to keep their search history, while choosing not to have recommendations on certain criteria. At least the main criteria used by the algorithms and the categories in which users are placed should be accessible to them, so they can contest their inclusion in a category, or even indicate certain categories that they feel could better represent them. This does not seem to be the case with any of the platforms examined above. Yet, algorithms applied to the data collected by streaming platforms can technically be programmed with the objective of promoting diversity, in what could be called a "governance through algorithms", besides the "governance by algorithms" exercised by such platforms.[77] In fact, it appears that some almost forgotten music titles have been able to achieve new success thanks to Spotify's algorithms.[78] One possibility for greater discoverability could be to have algorithms designed independently from the preferences already expressed if a user had the option to decide not to be profiled (recommendations of a more random nature)[79] or if he/she could explicitly express his/her interests.

Another question remains, as to what shapes cultural diversity online and how to ensure that this concept is understood as widely as possible. From the point of view of discoverability, the notion of cultural diversity held by the team of data scientists responsible for the creation of algorithms becomes fundamental in any attempt to improve recommendations of digital platforms. Greater dialogue with international

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77 M. Burri, *Discoverability of local, regional and national content online: mapping barriers to access and the potential for new guidance tools*, *op. cit.*, pp. 10, 14.

78 L. Carpentier, "L'algorithme, nouvelle machine à tubes", *Le Monde*, 15 February 2021, www.lemonde.fr/culture/article/2021/02/15/l-algorithme-nouvelle-machine-a-tubes_6069977_3246.html (last accessed March 7, 2022).

79 Although purely random suggestions can likely be ignored in practice or even impair the user experience (M. Burri, *Discoverability of local, regional and national content online: mapping barriers to access and the potential for new guidance tools*, *op. cit.*, p. 13).

organizations such as UNESCO, as well as with governments and civil society in different countries and regions, may prove essential for these platforms to improve their personalization services from a cultural diversity perspective.

General conclusions and recommendations

This chapter provided an overview of the significant variation in the robustness of the legal and regulatory framework among the examined African States, as well as in how the challenges in this field are addressed by each of them – differences that stem from multiple social, economic, and historical factors. The disparity in the digital environment in those countries is also flagrant from a market perspective, with dissimilarities that guide the development of streaming platforms in Africa. While some economically led behavior of the latter may progressively contribute to discoverability, their business model based on personalized services still needs improvement from a cultural diversity standpoint.

Based on the conclusions of the sections above, a few recommendations may be put forward.

First, any analysis of African cultural policies should avoid the erroneous tendency to use parameters that are exogenous to national contexts. The strengthening of cultural diversity objectives within the international community through the implementation of the CDCE should not overlook the fact that the capacity of States from the Global North to raise and prioritize topics is infinitely bigger compared to those in the South. In the Global North are the main contributors to UNESCO's budget, as well as the funders of off-budget initiatives. These countries are also, in their majority, territories of origin and/or residence of experts who gravitate within the administrative structure of the CDCE Secretariat and contribute to the conceptual and analytical work that is crucial to the development of UNESCO actions around the CDCE. Inevitably, Global South interests acquire under-representation in the UNESCO agenda. Although this geopolitical and, above all, symbolic space is marked by the idea of margins, as Grada Kilomba[80] reminds us, being at the margins helps us to critically perceive hegemonic discourses and practices of the center. Considering that African priorities and challenges encounter greater difficulties to achieve centrality in the multilateral environment, it becomes necessary to balance them with issues considered global. For example, one of the key issues in the regulation of music streaming platforms in the countries of the Global South still relates to an insufficiently considered need to reconcile private interests of copyright holders and the

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80 G. Kilomba, *Plantation memories: episodes of everyday racism*, Ontario, Between the Lines, 2021.

public interest of access to culture.[81] Specificities of African States and economies should thus be more strongly highlighted and addressed by the CDCE Parties.

Secondly, the extraordinary cultural richness of African States should be used as an advantage to bring private actors, including streaming platforms from the US, Europe, and China to their territories under specific conditions of contribution to the African cultural and creative sectors. Such conditions should cover how these platforms commit to promoting the discoverability of diverse African cultural content. Public initiatives from national and/or international authorities to boost discoverability should be adapted to specific political, social, and economic conditions of African States, including the fact that several of these States are characterized by the predominance of a plurality of local communities, weak bonds of loyalty to State, growing informal trade and financial sectors, as well as the dependence of economies on the import of technology intensive products. Finally, the requirement of greater transparency regarding the algorithms used by streaming platforms and clear commitments on their part regarding the processing of users' personal data for profiling and customization of their services seem also fundamental. The way profiling and content recommendation is determined should reflect the specificities of local communities and national digital strategies in favor of cultural diversity.

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81 In fact, "[i]t is important to point out […] that the debate on copyright has been, throughout history, mostly guided by the countries of the global North, and that there is a controversy around this discussion, because, at the limit, the copyright may collide with another fundamental right, that of access to culture. And this is a fundamental issue to be discussed mainly in developing countries and/or countries with contexts of great social inequality. Thus, if the more general purpose of the [CDCE] is to help reduce global inequalities, it seems essential to seek a balance between the prerogatives of copyright and access to culture". See D. Oliveira, M. C. Oliveira and A.P. do Val, "Três pautas em destaque na agenda de diversidade cultural da UNESCO: ambiente digital, tratamento preferencial e participação da sociedade civil", *Revista de Direito Internacional*, vol. 17, n° 3, 2020, p. 86.